

CHAPTER 3  
UNEMPLOYMENT INSURANCE APPEALS

**486—3.1(10A) Appeals.**

**3.1(1)** *Lower authority's decision to employment appeal board.* A copy of each job service administrative law judge's decision will be submitted to the employment appeal board on the date the decision is issued.

**3.1(2)** *Form and time of appeal.* Any person aggrieved by a job service decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of notification of the parties or mailing the decision. The appeal shall be in writing, signed by the appellant or an authorized agent. If an appeal is signed by an authorized agent, the name of the appellant shall be shown at the end followed by the signature of the authorized agent. The appeal shall state the grounds for the appeal. The appeal shall be addressed to: Employment Appeal Board, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. The appeal may also be filed at any local office maintained by the department of employment services throughout the state.

**3.1(3)** *Filing the appeal.* An appeal shall be deemed filed on the date it is delivered or mailed to the office of the employment appeal board. The mailing date shall be presumed to be the postmarked date appearing on the envelope if postage was prepaid and the envelope was properly addressed. The employment appeal board shall deliver or mail a copy of the appeal to the respondent.

After an appeal is filed, additional filings or documents may be sent by facsimile transmission (fax). A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the EAB. The EAB will not provide a mailed, file-stamped copy of documents filed by fax.

**3.1(4)** *Procedure when appeal is filed.* Upon receipt of notice of appeal, the entire record before the administrative law judge shall be forwarded to the appeal board. One copy of the testimony and evidence received by the administrative law judge shall be mailed to the appellant and respondent or their designated representative at least seven days before the date of the hearing, if any, specifying the place and time of the review by the employment appeal board.

**3.1(5)** *Additional parties.* Whenever it appears that other parties should be joined in order to dispose of all issues, the employment appeal board shall so order and notify the parties. The board may remand the case for hearing and decision by an administrative law judge.

**3.1(6)** *Consolidation of proceedings.* Any number of cases before the appeal board may be consolidated for hearing, argument, consideration or decision when the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

**3.1(7)** *Issues on appeal.* In an appeal from a decision of an administrative law judge, the appeal board may consider any issue raised by the department's action, by the cases before the administrative law judge, or by the case. In benefit matters, the board may consider the entire matter of the claimant's entitlement to benefits from the effective date of the determination to the date of the administrative law judge's hearing. If new issues appear to arise as a result of the case, the appeal board may remand such issues to an administrative law judge for appropriate action; or, in the interest of prompt administration of justice and without prejudice of the substantive rights of any party, any issue material to the appeal may be heard and decided though not specifically indicated as a ground for appeal or in the hearing.

**3.1(8)** *New or additional evidence.*

*a.* An application to present new or additional evidence shall be in writing and shall be filed within ten days after the date of mailing of notice to the parties that an appeal has been filed.

*b.* An application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. No such evidence shall be considered by the appeal board unless the board has ordered it admitted.

c. Whenever the appeal board, on its own motion, or upon the application of a party, orders the taking of new or additional evidence, the board may schedule a hearing or remand the matter to an administrative law judge for that purpose. The issues at such hearing shall be limited to those issues designated by the appeal board. The parties shall be notified ten days before the date of the hearing, specifying the place and time of the hearing. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issues on which the appeal board directed the taking of evidence. All parties shall have the right to examine and cross-examine other parties and witnesses. However, if only documentary evidence is to be admitted, a copy of the evidence shall be mailed by the appeal board to each of the parties. Ten days shall be given the parties to rebut such evidence.

**3.1(9) *Postponement of hearing of appeals.*** Applications and requests for postponement of hearing of appeals scheduled before the appeal board shall be made three days before the date of the scheduled hearing and shall be granted at the discretion of the appeal board. Each party shall be granted only one postponement except as determined by the chairperson of the appeal board.

**3.1(10) *Adjournment and continuance.*** Adjournment and continuance may be granted for good cause by the appeal board, and notice shall be given by mail to all parties at their last known address according to the department's records.

**3.1(11) *Hearing of appeals.*** All appeals to the appeal board may be heard and based upon the evidence in the record made before the administrative law judge or the appeal board. The appeal board may schedule a hearing to permit the parties to offer oral or written argument, or both. (The parties shall be notified by the appeal board at least ten days before the date of the hearing.)

**3.1(12) *Remand of appeals.*** The appeal board may remand any claims or any issue involved in a claim to an administrative law judge for the taking of additional evidence as the appeal board may deem necessary. Evidence shall be taken by the administrative law judge in the manner prescribed for the conduct of hearings. Upon completion of taking of evidence by an administrative law judge pursuant to the direction of the appeal board, the claim or the issue involved in a claim shall be returned to the appeal board for its decision, or the decision of the administrative law judge may be set aside and the claim or any issue may be returned to the administrative law judge for a de novo hearing thereon.

a. The order of remand shall contain the specific ground or issue for which remand is granted.

b. The administrative law judge will take testimony on this specific ground or issue and none other. Previous testimony or evidence shall not be repeated.

**3.1(13) *Taking of evidence.*** If the appeal board decides that evidence shall be taken, such evidence may be taken before the appeal board. The hearing shall be conducted according to the pertinent rules set for such hearing. The proceedings shall be recorded and made a part of the record.

**3.1(14) *Written briefs and oral arguments.*** The interested parties may be granted a reasonable opportunity to present arguments on all issues and law to be decided. Written briefs and arguments may be submitted within seven days from the date of the mailing of the transcript to the parties. A request for an extension of time in which to file a written brief and argument must be in writing and filed with the appeal board prior to the expiration date on which the brief and argument would be due.

The appeal board may afford the interested parties an opportunity to present oral arguments and may limit the time of oral arguments. Requests for oral arguments shall be submitted within ten days from the date of the mailing of the notice from the appeal board to the parties acknowledging receipt of an appeal from the decision of the administrative law judge.

**3.1(15) *Nonappearance at appeal hearing.*** If the appellant fails to appear at a scheduled hearing and does not submit good cause for such failure within ten days after the date of hearing, the appeal board shall issue a decision based upon the record.

**3.1(16) *Withdrawal of appeal.*** Any appeal may be withdrawn by the appellant, by written request, any time before a decision is issued by the appeal board. If a request is made, the appeal shall be dismissed. An appeal so dismissed may be reinstated by the appeal board if the appellant files a written request to reinstate and shows that the request for withdrawal resulted from misinformation given by the job service division or for good cause shown, as determined by the appeal board. A request for

reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal; or, in the event of fraud, within 60 days after discovery of the fraud.

**3.1(17) *Late appeals.*** The appeal board shall dismiss appeals which are not filed within 15 days from the date of the administrative law judge's decision unless good cause for the delay has been shown.

#### **486—3.2(10A) Removals.**

**3.2(1)** Within ten days following the decision of an administrative law judge, and in the absence of a filing of a notice of appeal to the appeal board by any of the parties from a decision of an administrative law judge, the appeal board on its own motion may order the parties to appear before it for a hearing on the claim or any issue involved therein.

**3.2(2)** Such hearings shall be held only after ten days' notice mailed to the parties from the decision of an administrative law judge.

**3.2(3)** The proceedings on any claim before an administrative law judge ordered by the appeal board to be removed to itself shall be presented, heard, and decided by the appeal board in the manner prescribed for the hearing of appeals before an administrative law judge. The appeal board may consider evidence received by the administrative law judge or any evidence already in the record.

#### **486—3.3(10A) Appeal board decisions.**

**3.3(1)** An appeal shall be decided upon the entire record and the record of the hearing before the administrative law judge together with such oral or written argument and new or additional evidence as the appeal board may have accepted.

**3.3(2)** Following the review of an appeal or the conclusion of a hearing on an appeal, the appeal board shall, within a reasonable time, render a written decision. The decision shall be signed by the members of the appeal board who reviewed the appeal, and shall be duly filed in the offices of the appeal board. All decisions of the appeal board shall be duly filed in the offices of the department of employment services.

**3.3(3)** A quorum of two members of the appeal board must be present when any decision is voted upon.

**3.3(4)** If a decision of the appeal board is not unanimous, the decision of the majority shall control. A majority shall be two members. The minority may file a dissent from such decision setting forth the reasons why that member fails to agree with the majority. The appeal board, in its discretion, may omit the giving of any reasons on cases where the decision of an administrative law judge is affirmed without any alteration or modification.

**3.3(5)** Copies of the decisions shall be mailed to the other parties to the appeal. The decision shall specify the parties' appeal rights.

**3.3(6)** The appeal board's decision shall become the final decision of the agency 30 days after the decision is mailed to all interested parties of record. An adversely affected party may file an application for rehearing upon the showing of good cause within 20 days of the board's decision.

**3.3(7)** The appeal board's decision on an application for a rehearing shall be final and without further review 30 days after the decision is mailed to the parties of record unless within that 30 days a petition for judicial review is filed in the appropriate district court.

**3.3(8)** An application for a rehearing shall be deemed denied unless the appeal board acts upon it within 20 days after it is filed with the appeal board. A petition for judicial review may be filed within 30 days after an application for rehearing is deemed denied.

**3.3(9)** After a decision of the appeal board has become final, the matter shall not be reopened, reconsidered, or reheard. The decision shall not be changed except to correct clerical errors.

#### **486—3.4(10A) Rehearing of the appeal board decision.**

**3.4(1)** Solely on showing of good cause, the appeal board may, upon application by an adversely affected party, reopen and review any prior decision, provided that application for rehearing is filed within 20 days after issuance of the prior decisions.

**3.4(2)** The application shall be in writing, stating specific grounds therefor and the specific relief sought. Copies of such application shall be timely mailed by the appeal board to all parties of the record not joining in the application.

**3.4(3)** In determining whether good cause exists for the appeal board to rehear a prior decision, the following factors shall be considered.

*a.* When the application presents newly discovered evidence or facts which are neither cumulative or corroborative, but material to the issue decided and of sufficient weight to cause a reversal or change in the appeal board decision.

*b.* Prior to and at the time of the appeal board decision, such new information must not have been available through reasonable search by the applicant and must not have been previously considered in any prior appeals decision.

*c.* When the application presents evidence that benefits were allowed or denied or the amount of benefits was fixed on the basis of nondisclosure or a misrepresentation of material fact.

**3.4(4)** If the application for rehearing is allowed, the record may be remanded to an administrative law judge to allow the taking of further testimony and establishment of further or new findings of fact, then transferred to the appeal board. The appeal board may admit documentary evidence or take additional testimony and base its decision on the entire record.

**3.4(5)** The application for rehearing shall be deemed denied unless the appeal board grants the application within 20 days after its filing.

**3.4(6)** If an application for rehearing is denied, all administrative remedies will have been exhausted and the applicant may petition the district court for judicial review pursuant to rule and Iowa Code section 17A.19.

#### **486—3.5(10A) Disqualification of appeal board members.**

**3.5(1)** No appeal board member shall participate in any hearing in which the member has an interest which might affect the ultimate decision.

**3.5(2)** A challenge to the interest of an appeal board member may be made in writing at any time prior to the date the appeal board's decision becomes final.

**3.5(3)** Such challenge shall be filed with the chairperson of the appeal board and will be heard by the unchallenged members of the appeal board. A tie vote shall result in dismissing the challenge.

**3.5(4)** In the event one or more members of the appeal board are absent or otherwise disqualified, the case will be heard by the remaining members. A tie vote will result in affirming the hearing officer's decision by operation of law.

**486—3.6(10A) Public hearing.** All hearings shall be open to the public except the chairperson, in cases where good cause is shown, may close the hearing to the public.

#### **486—3.7(10A) General rules for appeals.**

##### **3.7(1) Investigations.**

*a.* Whenever, in the course of an appeal, an investigation, inquiry, payroll audit or other examination appears necessary for a proper determination of a case, the appeal board may request such investigation, inquiry, payroll audit, or other examination through the appropriate department.

*b.* Hearings on appeals shall be continued or adjourned pending the completion of such investigation, inquiry, or examination.

*c.* The right to be informed of, to cross-examine, to inspect, and to rebut the results thereof is preserved to all parties to the appeal.

##### **3.7(2) Information to be furnished.**

a. Information from the records of the Iowa department of employment services shall be furnished to a party or the party's representative to the extent necessary for the proper presentation of an appeal only upon application.

b. Applications for information from records of the department shall state the nature of the information desired.

**3.7(3) *Payment of benefits.*** If the appeal board's decision allows benefits by reversing or modifying an administrative law judge's decision, benefits shall be promptly paid. The filing of an application for a rehearing or for judicial review shall not stay the effect of the appeal board's decision.

**3.7(4) *Redeterminations.***

a. If a claim has been decided under the gross misconduct section of the Iowa Code, a redetermination may be made any time within five years of the effective date of the claim, even though a final decision has been made by the appeal board.

b. The redetermination may be appealed to the appeal board.

c. If the redetermination results in a reversal of an allowance of benefits and holds that the claimant was discharged for an act of gross misconduct, all benefits paid to the claimant prior to the redetermination shall be assessed as an overpayment and shall be collectible in the manner provided in Iowa Code section 96.14(3) for the collection of past due contributions.

d. If the redetermination results in an allowance of benefits by reversing a previously imposed disqualification for gross misconduct, the claimant shall be paid benefits for all weeks for which the claimant has submitted a continued claim report form.

e. A request for a redetermination may be made only by an interested party to the original case which resulted in the determination, decision, or final decision of the appeal board under the gross misconduct section.

**3.7(5) *Division of job service employees as witnesses.***

a. Those employees of the division of job service directly involved in handling the claim which resulted in the appeal may be called to testify by the appeal board.

b. The employee having direct knowledge of the local job market may be called as a witness by the appeal board to testify concerning the wages, hours and other conditions of employment relating to the particular job involved in the appeal.

c. The employer to whom an applicant is referred for work or who offers work or recall to work to an individual shall also be named in the appeal and shall receive all applicable notices.

**486—3.8(10A) Retention of records.** Records of proceedings in contested cases, appealed to the employment appeal board, shall be retained:

1. Sixty days following the final date for appeal to the district court.
2. Sixty days following the entry of a final order by the district court when a petition for judicial review has been filed.
3. Sixty days following the filing of the decision of the court of appeals.
4. Sixty days following the filing of an opinion by the supreme court.

Other records of the employment appeal board may be retained as determined by the board.

These rules are intended to implement Iowa Code section 10A.601.

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